No. 89-1877

In The

Supreme Court of the United States

October, Term, 1989

MICHAEL NULL,

Petitioner,

vs.

CITY OF LANSING, MICHIGAN,

Respondent.

MEMORANDUM OPPOSING CERTIORARI

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MEMORANDUM OPPOSING CERTIORARI

A review of the Opinion of the United States Court of Appeals for the Sixth Circuit (1a-6a) and the Opinion of the trial court (7a-13a) makes clear that there is no reason or basis to entertain the within Petition. Just as importantly, the very recent decision by this Court in the case of *Cooter & Gell v. Hartmarx Corp.*, ___ U.S. ___, ___ S. Ct. ___, 58 U.S.L.W. 4763 (Docket No. 89-275, June 11, 1990) answers the question raised by the instant Petition: the Sixth Circuit was empowered, indeed, was required, to apply an abuse of discretion standard on both law and fact in reviewing the district court's decision to impose $5,592.00 in Fed. R. Civ. P. 11 sanctions on counsel Null. Petitioner's contention that he has a right to *de novo* review for the determination that counsel violated Rule 11 was explicitly rejected by the Court. When, as here, the decision of the trial court is rooted in a factual determination, the Sixth Circuit is required to apply this deferential standard of appellate review to all issues raised by a Rule 11 violation. *Cooter & Gell*, 58 U.S.L.W. at 4767.

It is no answer to all of this that the issues raised by Petitioner are partly factual claims and partly legal issues. As *Cooter & Gell, supra,* notes, making such distinctions is particularly difficult in the Rule 11 context. *Id.* at 4768. Of necessity, as *Cooter & Gell, supra,* notes, the determination as to whether an attorney's prefiling inquiry as to fact and law is reasonable is often, preliminarily, a factual one. *Id.* Thus, generally speaking, Rule 11's policies and goals support adopting an abuse of discretion standard of review of all factual and legal questions.

Directly disposing of the substance of much of the instant Petition, the Court has held, "[r]ather, an appellate court should apply an abuse of discretion standard in reviewing all aspects of a district court's Rule 11 determination. A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. . . . " *Cooter & Gell*, 58 U.S.L.W. at 4769.

In this case, the Sixth Circuit and the district court were cognizant that Mr. Null's client, Karen Christy, as Plaintiff, had lost a number of previous, similar lawsuits, state and federal, in her unsuccessful attempts to compel the City of Lansing to permit her to operate and to build an adult store at 1933 North Larch Street, Lansing, Michigan. *Karen Christy v. City of Lansing*, W.D. Mich. Docket No. G-84-367 *aff'd* United States Court of Appeals for the Sixth Circuit, Docket No. 87-1827, *Petition for cert. dismissed*, Application No. A-562, January 19, 1989; Ingham County, Michigan, Docket No. 87-59439CZ; W.D. Mich. Docket Nos. G-83-466 and G-84-367, *aff'd* under Sixth Circuit Docket Nos. 87-1282 and 87-1679. Given the rule of collateral estoppel, in light of the fact that Plaintiff's counsel conceded at first hearing that the Lansing Building Code is First Amendment "content neutral" (May 24, 1988 Transcript of Proceedings, p. 6) and because counsel for Christy declined to be bound by *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 106 S. Ct. 925 (1986), it is no wonder why the trial court found that action was " . . . lacking in merit, frivolous and an attack collaterally upon judgments or rulings in other lawsuits." (14a).

Mr. Null's client's legal view asserted before the district court, that *Freedman v. Maryland*, 380 U.S. 51, 85 S. Ct.

734 (1965) provided existent various procedural safeguards, was patently groundless and frivolous since no aspect of direct, content-oriented censorship was involved in this case, only the general application of safety and health laws which applied to everyone.

Given such a record and the decision in *Cooter & Gell, supra,* there is no necessity of granting the within Petition at this time. No abuse of discretion has been shown. Counsel Null does not deserve to be rescued from the imposition of $5,592.20 in Fed. R. Civ. P. 11 sanctions. Petitioner Null's request for a writ should be denied.

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DATED: June 22, 1990